

SENATE BILL 2966
By Ford

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 6, Part 1, relative to the Protective Parent Reform Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by adding the following as a new, appropriately designated section:

(a) This act shall be known as the "Protective Parent Reform Act." The purpose of this act is to correct the trend in child custody and visitation cases wherein abused or neglected children, and children in homes where domestic violence exists, are placed by courts in the custody of the abusive, neglectful, or violent parent with the protective parent's custody, visitation, and contact with the child limited. In all child custody, visitation, and juvenile court cases, the following protections shall apply.

(b) The prohibition against ex parte contacts with a judge is specifically applicable to child custody and child visitation cases, and shall, in addition to the general applicability of the prohibition, specifically include contacts between judges and guardians ad litem, minor's counsel, custody evaluators, mental health professionals, mediators, screeners, and other such persons traditionally participating in child custody and visitation cases.

(c) The roles of guardians ad litem and children's attorneys shall be limited to advocating for the wishes of the child at issue, and to participating in the court proceedings by presentation of evidence and argument in the same manner as a parent's attorney. Such persons shall be prohibited from substituting their own opinions and judgments for the wishes of the child, submitting evidence which would be excluded under the applicable evidence law if tendered by any other party, and in no case shall such person be deemed a quasi-judicial officer or be granted any fact-finding role.

(d) Parents shall be provided full and timely access to all custody and mental health evaluations and reports which are to be considered in any custody or visitation proceeding, including all underlying data for such evaluations and reports, and shall be afforded the opportunity to depose prior to the trial and to cross-examine at trial any and all mental health or custody evaluators who will testify in a custody or visitation proceeding.

(e) No expert opinion or expert evidence attempting to discredit a parent's motivation for asserting that his or her child is abused, neglected, or at risk of the effects of domestic violence committed by the other parent, or attempting to discredit a child's report of such abuse, neglect, or violence, shall be allowed in a custody or visitation case unless that opinion or evidence is based on concepts and theories generally accepted by the scientific community and supported by credible and admissible evidence of facts which can be established independently of that expert's opinion.

(f) Due process shall be afforded all parents in such custody and visitation cases, and such custody and visitation decisions removing custody, visitation, or contact from a parent who believes or asserts that his or her child is the victim of abuse, neglect, or the effects of domestic violence perpetrated by the other parent shall not be made on the basis of written declarations or affidavits, or without adequate written advance notice and the opportunity to be heard as defined by state and federal constitutional law, even on a purportedly emergency basis, simply because that parent holds that belief. Furthermore, no such parent shall lose custody, visitation, or contact with a child based only on the opinion of a mental health professional that such parent is at risk of unlawfully fleeing with the child, unless credible and admissible evidence independent of the professional's opinion establishes that parent's plan or intent to flee.

(g) Court sponsored mediation, conciliation, and intake screening programs shall not make recommendations or fact-finding reports to the judge regarding child custody, visitation, or contact unless all parties freely agree in advance of the transmittal of such report, and any parent shall have the right to contest the report.

(h) No findings by any child protection agency shall be considered res judicata or collateral estoppel, and shall not be considered by the court unless all parents are afforded the opportunity to challenge any such determination.

(i) Whenever child abuse, child neglect, or domestic violence is an issue in a child custody or visitation case, no mental health professional or child custody evaluator who lacks specialized training and experience in child abuse, child neglect, or domestic violence relevant to the specific allegations shall be appointed by the court to conduct any evaluation in the case.

(j) Admissible evidence of child abuse, child neglect, or domestic violence shall be considered in any child custody or visitation case.

(k) No parent shall be deprived of custody, visitation, or contact with his or her child, nor restricted in such custody, visitation, or contact, nor shall such a child be placed in foster care, simply because that parent reasonably believes that his or her child is the victim of child abuse, child neglect, or the effects of domestic violence, and acts lawfully in response to such reasonable belief to protect the child or to obtain treatment for the child.

(l) No valid final order of protection or domestic violence restraining order rendered pursuant to the state's domestic violence or family violence protection statutes and filed with the state's protective order registry shall be violated by the award of custody or visitation to the perpetrator of domestic violence where such is prohibited by the domestic violence order of protection then in effect.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.